

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	
ACRO ENERGY TECHNOLOGIES, INC.	§	CASE NO. 13-30985
	§	(Chapter 7)
DEBTOR	§	
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ACRO ENERGY TECHNOLOGIES, INC.	§	
AND HARRY FLEMING	§	
	§	
V.	§	ADVERSARY NO. 13-03053
	§	
SUNTECH AMERICA, INC.	§	

**AGREED MOTION TO ABATE ADVERSARY PROCEEDING**

TO THE HONORABLE BANKRUPTCY JUDGE KAREN K. BROWN:

COMES NOW, Harry Fleming, Plaintiff in the above-referenced adversary proceeding and hereby files this Agreed Motion to Abate Adversary Proceeding (“**Motion**”) and in support thereof, respectfully avers onto this Court as follows:

**I. REQUESTED RELIEF**

1. By this Motion, Plaintiff, Harry Fleming, respectfully requests that this Court abate this adversary proceeding. At issue in this adversary is whether Plaintiff is the alter ego of Debtor. The Chapter 7 Trustee has not yet determined whether to litigate the alter ego claim, thus, the claim is not yet ripe. Plaintiff therefore requests that the case be abated pending the Chapter 7 Trustee’s determination with respect to the litigation of the alter ego claim.

**II. BACKGROUND**

2. This Motion is governed by Fed. R. Bank. P. 9013 and Local Rule 9013. This Court has jurisdiction pursuant to 28 U.S.C. § 1334(a) and § 157.

3. On October 9, 2012, Plaintiff, Harry Fleming (“**Fleming**”) filed his Original Petition against Defendant, Suntech America, Inc. (“**Suntech**”) in the Civil County Court at Law No. 1 of Harris County, Texas, the Honorable Debra I. Mayfield presiding (the “**State Court**”).<sup>1</sup> In the State Court action, Fleming seeks, *inter alia*, a declaration under the Texas Declaratory Judgment Statute, Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.*, that he is not the alter ego of Acro Energy Technologies, Inc. (“**Debtor**”).

4. On or about February 21, 2013, Debtor filed its petition for relief under Title 11, Chapter 7 of the United States Bankruptcy Code in Case No. 13-30985. Joseph M. Hill was appointed as the Chapter 7 Trustee over the bankruptcy estate.

5. On March 7, 2013, Suntech removed the State Court action to this Court pursuant to 28 U.S.C. 1452(a) [**Dkt. No. 1**]. This case was assigned Adversary No. 13-03053.

6. On April 6, 2013, Plaintiff timely filed a Motion for Remand [**Dkt. No. 6**]. The oral hearing on the Motion for Remand is currently set for May 13, 2013 at 10:00 a.m.

### **III. ARGUMENT AND AUTHORITY**

**A. Abatement of this case is proper because the Chapter 7 Trustee has not yet determined whether to litigate the alter ego claim at issue; thus, the claim is not yet ripe. The Chapter 7 Trustee does not oppose the abatement.**

7. Currently, the underlying Chapter 7 case is still pending and the Chapter 7 Trustee is investigating the assets of the bankruptcy estate. At this point, the present case is not ripe as the Chapter 7 Trustee has not determined whether to litigate the alter ego claim in this adversary. Accordingly, Plaintiff requests that the Court abate this proceeding pending the Chapter 7 Trustee’s determination. The Chapter 7 Trustee does not oppose the abatement.

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<sup>1</sup> The lawsuit is Case No. 1021235; *Harry Fleming v. Suntech America, Inc.*, In the Civil County Court at Law No. 1

8. With respect to Plaintiff's Motion for Remand, which is set for oral hearing on May 13, 2013 at 10:00 a.m. [**Dkt. No. 6**], Plaintiff requests that the hearing be removed from the Court's docket and reserves the right to assert the Motion for Remand after the abatement period.

#### IV. CONCLUSION

9 For the foregoing reasons, Plaintiff, Harry Fleming, respectfully requests that this Court abate this Adversary Proceeding and grant such further relief as shall be just.

Dated: May 9, 2013

Respectfully submitted,

ALICIA M. MATSUSHIMA, P.C.

By: 

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**ATTORNEY FOR PLAINTIFF,  
HARRY FLEMING**

**CERTIFICATE OF CONFERENCE**

On May 7, 2013, I conferred with Tim Wentworth, counsel for Chapter 7 Trustee, Joseph M. Hill, and on May 8, 2013, I conferred with Michael Durrschmidt, attorney for Defendant, Suntech America, Inc., concerning the requested relief in this Motion to Abate Adversary Proceeding. Mr. Wentworth and Mr. Durrschmidt confirmed that they are **unopposed** to the requested relief.



Alicia M. Matsushima

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2013, a true and correct copy of the foregoing Agreed Motion to Abate Adversary Proceeding was served via CM/ECF and/or by First Class United States Mail, postage prepaid, on the following persons listed below.

Acro Energy Technologies Inc.  
c/o Mr. Andy Chen  
10700 Richmond Ave Ste 275  
Houston, Texas 77042

Glynda P. Stowers  
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Sugar Land, Texas 77498

Joseph M. Hill  
Cage Hill and Niehaus, LLP  
5851 San Felipe, Suite 950  
Houston, Texas 77057

Office of the U.S. Trustee  
515 Rusk Ave., Ste. 3516  
Houston, Texas 77002

Suntech America, Inc.  
c/o Michael J. Durrschmidt  
Hirsch & Westheimer, P.C.  
700 Louisiana Street, Ste. 2550  
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